



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: Greater Paw Paw Sanitary District
Attn: Robert Riggs, Chairman
P.O. Box 41
Rivesville, WV 26588

DATE: January 28, 2022

ORDER NO.: 10010

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code 22-11-1 et seq. to Greater Paw Paw Sanitary District (hereinafter "GPPSD").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. GPPSD operates a combined sewer system located near Rivesville, Marion County, West Virginia. GPPSD was reissued WV/NPDES Water Pollution Control Permit No. WV0084310 on January 3, 2019.
2. On August 16, 2012, GPPSD was issued Order No. 7662, which included requirements associated with GPPSD's Long Term Control Plan (LTCP).
3. On January 3, 2019, GPPSD was issued Amendment Number One (1) to Order No. 7662. The Amendment required submittal of a revised LTCP by January 3, 2020. In addition, the Amendment required submittal of a compliance report every six (6) months.
4. On February 22, 2021, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code and the WV/NPDES permit were observed and documented:

- a. Appendix A.I.9 – GPPSD failed to submit relevant facts in its permit application. Specifically, GPPSD has seven (7) lift stations, but is only permitted for six (6) lift stations.
- b. Section C.5 – GPPSD failed to submit quarterly reports regarding the implementation and accomplishments of the infiltration elimination program for the Town of Barrackville's collection system. Reports had not been submitted for the third and fourth quarters of 2019 and for all four quarters of 2020.
- c. Section D.2.a – GPPSD failed to have a Combined Sewer Overflow Operation & Maintenance Manual.
- d. Section D.2.a.06 – GPPSD failed to establish and maintain regularly scheduled outlet inspections with procedures to accurately detect and document wet and dry weather CSO discharge events. Specifically, GPPSD was unable to locate CSO Outlet Nos. C011 and C012 during this WVDEP inspection.
- e. Section D.2.h.01 – GPPSD failed to have a warning sign at CSO Outlet No. C008.
- f. Section D.2.h.06 – GPPSD failed to have a logbook of CSO discharges and activities.
- g. Section D.2.i.4 – GPPSD failed to monitor and maintain a record of the estimated volume of flow for all overflow events.
- h. Section D.2.g – GPPSD failed to have a pollution prevention program.
- i. Section D.6.a – GPPSD failed to submit all semiannual CSO Summary Reports for 2019 and 2020.
- j. Appendix A I.13 – GPPSD's outlet marker for CSO Outlet No. C012 was incorrectly labeled as C011.
- k. 22-11-1 et. seq. – GPPSD failed to comply with the terms and conditions of Order No. 7662 by failing to fulfill the requirements of Order for Compliance Item No. Six (6), which required GPPSD to adhere to the LTCP Implementation Schedule in Attachment A. Specifically, GPPSD did not achieve the following tasks:
 - i. Phase I.1 - GPPSD failed to install flow meters on the following four CSO Outlets: C004, C007, C011 and C012. The flow meters were required to be installed by December 31, 2013.
 - ii. Phase I.3 - GPPSD failed to install eight (8) rain barrels/cisterns within the PSD sewer shed by December 31, 2013.
 - iii. Phase II.2 - GPPSD failed to install twenty (20) rain barrels/cisterns within the PSD sewer shed by December 31, 2017.
 - iv. Phase II.3 - GPPSD failed to purchase a manhole ventilation system, methane gas detection system and a confined space safety entry system by December 31, 2017.
 - v. Phase II.5 - GPPSD failed to submit a post construction monitoring evaluation for Phase II construction within one (1) year after completion of construction, which would have been November 2020.
- l. 22-11-1-et.seq. – GPPSD failed to comply with the terms and conditions of Amendment No. One (1) to Order No. 7662 by failing to fulfill the requirements of Order for Compliance Item No. Two (2). Specifically, GPPSD failed to submit a revised LTCP by January 3, 2020.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W21-24-016-RNM and W21-24-017-RNM were issued to GPPSD.

5. On December 28, 2021, GPPSD submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated GPPSD's ability to pay a civil administrative penalty.
6. On January 27, 2022, WVDEP personnel and representatives of GPPSD met to discuss the terms and conditions of the Order. Subsequent to the meeting, GPPSD representatives submitted documentation regarding the purchase of several required items, such as rain barrels, flow meters, and components of a confined space system.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. GPPSD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, GPPSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when GPPSD will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0084310 and Order No. 10010. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of GPPSD's West Virginia Code and permit violations, GPPSD shall be assessed a civil administrative penalty of five thousand dollars (\$5,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule: Four hundred sixteen dollars and sixty-six cents (\$416.66) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next ten (10) months. Four hundred sixteen dollars and seventy-four cents (\$416.74) shall be submitted by the first day of the final month.


Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. GPPSD hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, GPPSD agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, GPPSD does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding GPPSD other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, GPPSD shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after GPPSD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and GPPSD shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which GPPSD intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of GPPSD (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving GPPSD of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject GPPSD to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.

6. This Order is binding on GPPSD, its successors and assigns.
7. This Order shall terminate upon GPPSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Robert Riggs, Chairman
Greater Paw Paw Sanitary District

2-8-2022

Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date



DSCF2535: Outlet marker for C008 did not have a posted warning.



DSCF2561: Outlet marker for C012 was incorrectly labeled as C011 and was located on the opposite side of Paw Paw Creek from the discharge pipe.



DSCF2571: Solids were observed on the hill leading to Paw Paw Creek from Outlet C012.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

GPPSD

Receiving Stream:

Treatment System Design Maximum Flow: _____ MGD

Treatment System Actual Average Flow: _____ MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			4a	4b	4c	4d	4e	4f	4g	4h	4i	4j	4ki	4kii
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	0	0	0	0	0	0	0	0	0	0	1	1
c)	Sensitivity of the Environment	0 to 3	0	0	0	0	0	0	0	0	0	0	1	1
d)	Length of Time	1 to 3	1	3	1	1	1	1	1	1	3	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0	0	0	0	0	0	1	1
	Average Potential for Harm Factor		0.4	0.8	0.4	0.4	0.4	0.4	0.4	0.4	0.8	0.4	1	1
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	3	3	3	1	3	3	3	3	1	3	3

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
4a	Minor	Minor	\$400	1	\$400
4b	Minor	Major	\$1,900	1	\$1,900
4c	Minor	Major	\$1,700	1	\$1,700
4d	Minor	Major	\$1,700	1	\$1,700
4e	Minor	Minor	\$400	1	\$400
4f	Minor	Major	\$1,700	1	\$1,700
4g	Minor	Major	\$1,700	1	\$1,700
4h	Minor	Major	\$1,700	1	\$1,700
4i	Minor	Major	\$1,900	1	\$1,900
4j	Minor	Minor	\$400	1	\$400
4ki	Minor	Major	\$2,000	1	\$2,000
4kii	Minor	Major	\$2,000	1	\$2,000
4kiii	Minor	Major	\$2,000	1	\$2,000
4kiv	Minor	Major	\$2,000	1	\$2,000
4kv	Minor	Major	\$1,700	1	\$1,700
4l	Minor	Major	\$1,700	1	\$1,700
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$24,900

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$2,490
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$10,000		\$10,000
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$2,789	(\$2,789)
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$2,490)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,490)
6.2.b.5 - Ability to Pay		99	(\$24,651)
Penalty Adjustments			(\$19,900)
Penalty =			\$5,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$10,000
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$10,000
Comments: Avoided cost of post-construction monitoring evaluation (\$10,000).	